

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEMART J. GRAVES,

Defendant-Appellant.

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UNPUBLISHED

May 25, 2001

No. 221297

Wayne Circuit Court

LC No. 98-011468

Before: Jansen, P.J., and Zahra and Owens, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction of attempted possession of less than twenty-five grams of cocaine, MCL 333.7403(2)(a)(v); MSA 14.15(7403)(2)(a)(v); MCL 750.92; MSA 28.287, entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A police officer observed defendant, whom he knew, push a woman. As the officer stopped, he observed defendant discard a cigarette package. After speaking with defendant, the officer allowed him to leave the scene. The officer observed the woman attempting to conceal the cigarette package under her foot. The officer examined the package and found nine rocks of crack cocaine concealed under four cigarettes. Defendant was returned to the scene and arrested.

The trial court acquitted defendant of the principal charge of possession of less than twenty-five grams of cocaine, but convicted him of an attempt to commit that offense. The court found that while defendant had momentary possession of the cocaine, the woman had a greater possessory interest.

When reviewing a challenge to the sufficiency of the evidence in a bench trial, we view the evidence presented in a light most favorable to the prosecution, and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. The trier of fact may make reasonable inferences from evidence in the record, but may not make inferences completely unsupported by any direct or circumstantial evidence. *People v Petrella*, 424 Mich 221, 268-270, 275; 380 NW2d 11 (1985); *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

In a bench trial, the court must make findings of fact and state separately its conclusions of law. MCR 6.403. Findings are sufficient if it appears that the court was aware of the issues and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). We review a trial court's findings of fact for clear error. MCR 2.613(C); *People v Truong (After Remand)*, 218 Mich App 325, 330; 553 NW2d 692 (1996).

The elements of possession of less than twenty-five grams of cocaine are: (1) that the defendant possessed a controlled substance; (2) that the substance possessed was cocaine; (3) that the defendant knew that he possessed cocaine; and (4) that the substance was in a mixture weighing less than twenty-five grams. CJI2d 12.5. An attempt consists of: (1) an intent to do an act or to bring about certain consequences which would in law amount to a crime; and (2) an act in furtherance of that intent which goes beyond mere preparation. A defendant may be convicted of an attempt even if the evidence shows a completed crime. *People v Jones*, 443 Mich 88, 100, 103; 504 NW2d 158 (1993).

Defendant argues that the evidence was insufficient to support his conviction. We disagree and affirm. The trial court was entitled to find the officer's testimony credible and to accept it. *People v Givans*, 227 Mich App 113, 123-124 575 NW2d 84 (1997). Possession of a controlled substance may be actual or constructive. The critical question is whether the defendant had dominion or control over the substance. Mere presence is insufficient. Some additional link between the defendant and the controlled substance must be shown. Circumstantial evidence and reasonable inferences drawn from the evidence are sufficient to prove possession. *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998). A person may possess a controlled substance jointly with one or more other persons. *People v Wolfe*, 440 Mich 508, 520; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). The evidence that defendant discarded the package containing crack cocaine from his person demonstrated that he exercised dominion and control over, and thus at least constructive possession of, the controlled substance. *Fetterley, supra*. The evidence that defendant discarded the package as the police arrived supported an inference that he knew that the package contained cocaine. *Vaughn, supra; Fetterley, supra*. The evidence showed the completed crime of possession of less than twenty-five grams of cocaine; however, defendant could be convicted of an attempt under the circumstances. *Jones, supra* at 103. Viewed in a light most favorable to the prosecution, the evidence was sufficient to support defendant's conviction. *Petrella, supra*.

Affirmed.

/s/ Kathleen Jansen  
/s/ Brian K. Zahra  
/s/ Donald S. Owens